

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JOHN E. SCHWARTZ

Claimant

VS.

BOARD OF PUBLIC UTILITIES - McPHERSON

Respondent

Self-Insured

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Docket No. 213,921

ORDER

Respondent appeals from a preliminary hearing Order of August 6, 1996, wherein Administrative Law Judge Jon L. Frobish granted claimant benefits in the form of temporary total disability compensation and authorized medical payments and treatment.

ISSUES

Respondent appeals the following issues to the Workers Compensation Appeals Board:

- (1) Whether this appeal is timely and whether the Workers Compensation Appeals Board has jurisdiction to review this matter under K.S.A. 44-534a, as amended, and K.S.A. 44-551, as amended, as Judge Frobish's decision was dated August 6, 1996, but did not become effective until after August 19, 1996, the date claimant's counsel provided the court with the required supplemental medical evidence.
- (2) Whether the Administrative Law Judge incorrectly held that claimant's claimed accidental injury arose out of and in the course of his employment.

- (3) Whether the Administrative Law Judge incorrectly found that notice was properly given to the employer.
- (4) Whether the Administrative Law Judge exceeded his authority in ordering temporary total disability benefits and medical compensation to the claimant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

The Appeals Board finds the appeal by respondent from the August 6, 1996, Order of Administrative Law Judge Jon L. Frobish is not timely and should be, and is hereby, dismissed.

A preliminary hearing was held on August 6, 1996. Respondent contends claimant's counsel was to provide the court with additional medical evidence. A review of the transcript indicates the court found claimant had an aggravation of a preexisting injury and indicated he was going to authorize Eustaquio Abay, M.D., as the treating physician and order medical bills to be paid. It also indicates a finding that claimant had carried his burden regarding both notice and accidental injury arising out of and in the course of his employment. The court went on to advise he was going to order the temporary total disability compensation but did request the record be supplemented regarding the temporary total issue. Claimant's attorney did volunteer to provide additional medical evidence to verify the no-work statement but there is no indication on the record that the Administrative Law Judge intended to delay his Order awaiting the receipt of any information.

A review of the file indicates that the August 6, 1996, Order was issued on August 6, 1996, and not after August 19, 1996. There also is no indication from the Administrative Law Judge that the effective date of this Order is anything other than that appearing on the face of the Order.

K.S.A. 44-551(b)(1), as amended, requires review by the Appeals Board upon written request of an interested party within 10 days. The effective date of an order pursuant to K.S.A. 44-525, as amended, shall be the date after the date contained on the order. Thereafter, the parties have 10 days in which to appeal. As such, the last date of appeal available to the parties would be August 19, 1996. As respondent's appeal was not filed until August 30, 1996, the Appeals Board finds for purpose of this preliminary hearing that the appeal by respondent was not timely and should be, and hereby is, dismissed.

WHEREFORE it is the finding, decision, and order of the Appeals Board that the appeal of respondent in the above matter should be, and is hereby, dismissed and the

Order of Administrative Law Judge Jon L. Frobish dated August 6, 1996, remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of October 1996.

BOARD MEMBER

c: Phillip R. Fields, Wichita, KS
Karen D. Pendland, Kansas City, MO
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director